

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

SECOND AMENDMENT ARMS (a d/b/a of )  
R. Joseph Franzese), R. JOSEPH FRANZESE, )  
individually and d/b/a SECOND AMENDMENT )  
ARMS, and TONY KOLE, )

Plaintiffs,

V.

CITY OF CHICAGO, a municipal corporation, )  
 RAHM EMANUEL, in his official capacity as )  
 Mayor of the City of Chicago, GARRY )  
 McCARTHY, Superintendent of Police of the City )  
 of Chicago, and SUSANA MENDOZA, City Clerk )  
 of the City of Chicago, )

Defendants.

Case No: 1:10-CV-4257

Hon. Robert M. Dow, Jr.  
U.S. District Court Judge

Hon. Sheila M. Finnegan  
U.S. Magistrate Judge

**PLAINTIFFS' RESPONSE TO DEFENDANTS' L.R.56.1(a)(3) STATEMENT OF UNDISPUTED FACTS**

NOW COME the Plaintiffs, SECOND AMENDMENT ARMS (a d/b/a of R. Joseph Franzese), R. JOSEPH FRANZESE, individually and d/b/a Second Amendment Arms, and TONY KOLE, by and through undersigned counsel, and, for their Response to Defendant's F.R.Civ.P. 56.1(a)(3) Statement of Undisputed Facts, states as follows:

1. Plaintiff R. Joseph Franzese (“Franzese”) is a citizen of the United States who resides in Hainesville, Illinois. Plaintiffs’ Fourth Amended Complaint (“Compl.”) ¶2; Plaintiffs’ Answer to Defendants’ Third Set of Interrogatories (“Pl. Resp. to Interrog.”) (attached hereto as Ex A) No. 1.

**RESPONSE:** Admit.

2. Plaintiff Second Amendment Arms (“SAA”) was an entity owned by Plaintiff Franzese and under which Plaintiff Franzese did business. Compl. ¶ 2; Pl. Resp. to Interrog. No. 4.

**RESPONSE:** Admit.

3. Plaintiff Tony Kole is a citizen of the United States who resides in Waukegan, Illinois. Compl. ¶ 4; Pl. Resp. to Interrog. No. 3.

**RESPONSE:** Admit.

4. Defendant City of Chicago (“City”) is a municipal entity organized under the Constitution and laws of the State of Illinois. Compl. ¶ 5; Defendants Answer & Affirmative Defenses to Plaintiffs' Third Amended Complaint ("Answer") 15.

**RESPONSE:** Admit.

5. Defendant Rahm Emanuel is Mayor of the City of Chicago and named as a defendant in his official capacity. Compl. ¶ 6; Answer ¶ 6.

**RESPONSE:** Admit.

6. Defendant Eddie Johnson is the Superintendent of the Chicago Police Department. Superintendent Johnson replaced former Superintendent Garry McCarthy, who was named as a defendant in his official capacity. Compl. ¶ 7; Answer ¶ 7.

**RESPONSE:** Admit.

7. Defendant Susana Mendoza is the Clerk of the City of Chicago and named as a defendant in her official capacity. Compl. ¶ 8; Answer ¶ 8.

**RESPONSE:** Admit.

### **Jurisdiction and Venue**

8. Plaintiffs here raise claims under the Second Amendment of the United States Constitution, and accordingly, this Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, and 42 U.S.C. § 1983.

**RESPONSE:** Admit.

9. The City of Chicago is located within the Northern District of Illinois of the United States District Court, and accordingly, venue is proper under 28 U.S.C. § 1391.

**RESPONSE:** Admit.

### **Undisputed Material Facts**

10. Franzese submitted an application to the City on July 2, 2010 (attached hereto as Exhibit B) for SAA to obtain a business license to sell firearms at 415 West Armitage Avenue, Floor 1, Chicago, Illinois 60614.

**RESPONSE:** Admit.

11. At the time Franzese submitted his application for SAA to obtain a business license, 415 West Armitage was zoned RM-5. *See* Declaration of Patti Scudiero (attached hereto as Exhibit C) ¶¶ 9-11. The zoning for the property located at 415 West Armitage since Franzese submitted his application has been RM-5. *Id.* ¶¶ 9-10, 12.

**RESPONSE:** Upon information and belief, admit,

12. RM-5 is a residential zoning classification that does not permit business or retail uses, either as of right or as a special use. See Municipal Code of Chicago § 17-2-0207 (attached hereto as Exhibit D).

**RESPONSE:** Admit, based on the premise that if something is not listed as a permitted use in the zoning ordinance table then it is prohibited.

13. The City ordinance banning the sale of firearms was enacted by the City Council on July 2, 2010, and it became effective on July 12, 2010. See Journal of July 2, 2010 City Council Proceedings (attached hereto as Exhibit E) at 96235, 96265. That ban was repealed on June 25, 2014, effective immediately. See Journal of June 25, 2014 City Council Proceedings (attached hereto as Exhibit F) at 83727, 83760.

**RESPONSE:** Admit.

14. During the period from January 1, 2010 to June 25, 2014, the only location for which Franzese or SAA submitted an application to the City of Chicago for a business license to open a retail establishment at which firearms would be sold was 415 W. Armitage, Chicago, Illinois. See Defs.' First Set of Requests for Admission to Pls. SAA and Franzese (attached hereto with proof of service documents as Exhibit G).

**RESPONSE:** Admit.

WHEREFORE, the Plaintiffs, SECOND AMENDMENT ARMS (a d/b/a of R. Joseph Franzese), R. JOSEPH FRANZESE, individually and d/b/a Second Amendment Arms, and TONY KOLE, requests this Honorable Court to deny the Defendant's F.R.Civ.P. 56(a) Motion for Summary Judgment in its entirety, as well as any and all further relief as this Court deems just and proper.

Dated: May 19, 2017

Respectfully submitted,

By:                     /s/ David G. Sigale                      
Attorney for Plaintiffs

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**CERTIFICATE OF ATTORNEY AND NOTICE OF ELECTRONIC FILING**

The undersigned certifies that:

1. On May 19, 2017, the foregoing document was electronically filed with the District Court Clerk *via* CM/ECF filing system;
2. Pursuant to F.R.Civ.P. 5, the undersigned certifies that, to his best information and belief, there are no non-CM/ECF participants in this matter.

/s/ David G. Sigale

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